

Memorandum

To : Advice Request Meeting Participants

Date : July 11, 1984

From : FAIR POLITICAL PRACTICES COMMISSION
Diane Maura Fishburn

Subject : Payments to Public Officials--Reimbursement for Expenses or Gifts?

Facts: Contra Costa Water District has invited various elected officials who serve within its service area to be a part of a "Liaison Committee" to the District. The purpose of the Committee is to provide a forum to inform city officials regarding water policy and operations in the area. They will not actually be advising the District in any manner. "To help defray personal expenses," the District has offered to pay \$25 a month to a maximum of two councilmembers from each city who attend the monthly meetings of the Committee. In addition, each meeting will include a complimentary dinner. The District did not name the two councilmembers who are invited to attend; rather it is left up to each city to select the councilmembers.

The city attorney from one of the cities called me to ask whether the \$25 payment and the dinner should be considered gifts to the councilmembers who attend or reimbursements for expenses from a local government agency. His initial reaction was that the payments constituted gifts and could create conflict problems for the councilmembers who accepted such payments. He said that it was his impression that the District wanted to "wine and dine" the local elected officials to make them more favorable on city decisions affecting the water district.

Putting aside the question of whether these payments from the District are an appropriate expenditure of public monies, the issue is whether the \$25 payment (\$300 in a calendar year) and the dinner are gifts which must be reported and which could form the basis for disqualification or whether they are reimbursement for expenses from a local government agency and therefore excluded from the definition of income in Section 82030(b)(2).

Discussion: In the Spellman Opinion (1 FPPC Opinions 16, No. 75-026), the Commission held that a legislator who received a special tour of PG&E's nuclear power plant to provide information

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to state government through him had not received a gift within the meaning of Section 82028. The Commission stated:

Mr. Spellman's travel expenses are paid by the State, and the tour that is provided by PG&E, although intangible in nature, supplies information in a useful form and does not lend itself to any accompanying gratuities or special favors. (Emphasis added.)

In an advice letter to the State Water Resources Control Board (A-77-497), the question was whether members of several Regional Water Quality Boards must report the receipt of tours of certain California water supply systems as gifts. The Metropolitan Water District, a local government agency, at its own expense, conducted tour of the Colorado River Aqueduct and the California Aqueduct. The tours included an inspection of the facilities, transportation to and from the facilities, and meals and lodging. With very little discussion, the letter concluded that the tours were "best characterized as reimbursement for expenses" because the tours were of water-related facilities and the officials were performing official duties while on such tours. In addition, it was considered significant that the parties involved were both public agencies concerned with the administration of water facilities in California.

DMF:plh
Attachment

not gift, when received from another public agency in the context of one's official duties. (b)(2) 82028

State of California **Fair Political Practices Commission**



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December 6, 1977

Mr. William R. Attwater
Chief Counsel
State Water Resources
Control Board
Post Office Box 100
Sacramento, California 95801

A-77-497

Dear Mr. Attwater:

This is in response to your memorandum to Delbert Spurlock dated October 14, 1977, requesting informal advice with respect to whether members of several California Regional Water Quality Control Boards must report the receipt of tours of certain California water supply systems.

As outlined in your memorandum, the facts are as follows: The Metropolitan Water District, at its own expense, conducts tours of the Colorado River Aqueduct and the California Aqueduct. The tours include an inspection of the facilities, transportation to and from the facilities, and meals and lodging. The value of the tour to the individual participant clearly exceeds \$25 and in some cases exceeds \$250. Specifically, we are asked to determine whether the receipt of such a tour constitutes income as defined in the Political Reform Act (and the Conflict of Interest Code of the State Water Resources Control Board), and therefore must be reported on the Regional Board members' statements of economic interests.

^{1/}
Government Code §82030(b)^{1/}, which is incorporated by reference in the Water Resources Board's Code, provides in relevant part that:

... Income also does not include:

... (2) Salary and reimbursement for expenses or per diem received from a state or local government agency....

^{1/} All statutory references are to the Government Code unless otherwise noted.

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Metropolitan Water District is a "local government agency" as defined in §82041.

Initially, we observe that §82030(b)(2) excludes reimbursement for expenses from the definition of income even if the reimbursement is provided by a public agency other than the official's employer. Thus, if the tours are "reimbursement for expenses", they will not constitute reportable income to the members of the Regional Water Quality Control Board despite the fact that they were provided by Metropolitan Water District.

However, the tours could be considered to be "gifts" and not "reimbursement for expenses". If the tours constitute "gifts", they must be reported as income pursuant to the §82030(a) definition of income. We believe that the tours in the instant case are best characterized as reimbursement for expenses. We note that the tours in question are of water related facilities and that the officials are performing official duties while on such tours. Moreover, we think it is significant that the parties involved are both public agencies concerned with the administration of water facilities in California. Accordingly, we conclude that the tours are reimbursements for expenses from a state or local government agency and, pursuant to the exemption contained in §82030(b)(2), need not be reported.

If I can be of further assistance in this or any other case, please contact me.

Sincerely,



Kenneth W. Goshorn
Research Specialist III
Conflicts of Interest Division

KWG:glb